

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into effective as of April 14, 2014 ("Effective Date") between Monument, LLC, an Indiana limited liability company ("Monument"), and Northern New Mexico College, a constitutionally established institution of higher education, ("NNMC"). Monument and the NNMC are collectively referred to as the "Parties" and individually a "Party".

### RECITALS

A. NNMC and Monument wish to enter into an agreement whereby Monument provides project development services, including using commercially reasonable efforts to cause the General Contractor to construct, student housing ("Project"), on certain real property, identified in Exhibit 1, containing approximately 12.4 acres located on NNMC campus, generally depicted on the preliminary site plan attached hereto as Exhibit 2 (the "Property").

B. The Parties desire to effect the completion of Phase 1 by August 1, 2015. The parties propose to enter into this Agreement to evidence their respective commitments to that end, and to facilitate a multi-phased process.

C. The Parties understand that in order to determine the specific scope, terms and conditions of the Project, Monument financed and completed a Preliminary Development Assessment (PDA) which included a Land Use Master Plan ("Master Plan") Exhibit 2, Project Site Plan ("Site Plan") Exhibit 3, Project Site Survey ("Site Survey") Exhibit 4, Project Geotechnical Survey ("Geotechnical Survey") Exhibit 5, Phase 1 Environmental Review ("Environmental") Exhibit 6, Conceptual and Schematic Design, ("Plans and Specifications") Exhibit 7, Market Positioning Study ("Positioning Study") Exhibit 8, and the Project Development Budget ("Development Budget") Exhibit 9. The Parties understand that the Exhibits have been completed, and further developed and modified since their original completion as directed by NNMC, and may be modified, as authorized by NNMC, subsequent to the execution and delivery of this Agreement. As an accommodation, it is understood that unpaid fees and reimbursable expenses for PDA services as well as additional invoiced development fees and interest, as outlined in Exhibit 9, will be paid with the first draw at the close of financing. In the unlikely event that NNMC cannot obtain financing or necessary approvals within 90 days of the execution of this agreement, as indicated by financial or agency notice declining NNMC's application/submission, payment to Monument shall be immediately due.

D. To finance the development of the Phase 1 of the Project, NNMC will obtain financing in the approximate principal amount of Fifteen million dollars (\$15,815,000) (the "Financing") thru the New Mexico Finance Authority. The approximate anticipated sources and uses of funds for the Project are described on Exhibit 9, attached hereto and incorporated by reference herein (the "Development Budget"). The Parties are relying upon the Development Budget in proceeding with the Project.

F. The Parties desire to memorialize in this Agreement their understandings as to their various responsibilities, duties, rights and obligations with respect to the Project and certain related matters.



## TERMS

### 1. Introduction.

1.1 Exhibits. The Preamble, Recitals, and Exhibits 1 through 13 are parts of this Agreement and are incorporated herein by reference. The Exhibits are as follows:

Exhibit 1	Project and Legal Description
Exhibit 2	Master Plan
Exhibit 3	Site Plan
Exhibit 4	Site Survey
Exhibit 5	Geotechnical Survey
Exhibit 6	Phase I Environmental
Exhibit 7	Plans and Specifications
Exhibit 8	Positioning Study
Exhibit 9	Development Budget
Exhibit 10	Project's Insurance
Exhibit 11	Architect Contract, License and Insurance
Exhibit 12	Construction Contract, License, and Insurance
Exhibit 13	Consultants Contracts, License, and Insurance

1.2 Definitions. Capitalized terms used in this Agreement are defined in the text.

### 2. The Project.

2.1 Project Description. The Project is generally described and defined in Exhibit 1.

2.2 Plans and Specifications. The "Plans and Specifications" for the Project, as approved by the Parties, are attached as Exhibit 7.

2.3 Site Visits. NMMC may visit the Project Site at any time, upon reasonable prior notice to Monument, Monument's Representative or the General Contractor. However, NMMC must sign-in with Monument or General Contractor at the Project Site and follow General Contractor's safety rules and regulations in all respects. No such visits shall be permitted to cause any delays in the progress of the development of the Project.

### 3. Monument's Services.

3.1 Project Development. Subject to the terms and conditions set forth in this Agreement, Monument shall oversee the development, design, and construction of the Project and shall use commercially reasonable efforts to ensure that the General Contractor delivers a



Finally Complete Project. Monument shall supervise the development and construction process with the objective of causing the Project to be developed and completed in a good and workmanlike manner, free and clear of all mechanics' and similar liens, all in accordance with the terms of this Agreement. Monument shall oversee the development of the Project in accordance with the Architect's Contract (Exhibit 11), and the Construction Contract (Exhibit 12). The standard forms of the agreements to be used are attached hereto. The parties understand that the form of those contracts may require alteration to fulfill the needs of the parties. Monument will consult with NMMC regarding any such changes.

3.2 System Management Procedures and Policy. Subject to the terms and conditions set forth in this Agreement, Monument and will consult in the creation of System Management Tools related to the ongoing management of the Project, including but not limited to Dean of Students policies (marketing and student life), Bursar policies (billing, financial aid and payment policies), Registrar policies (billing, move in/out, timing and restrictions), Safety and Security policies (resident advisors, lighting, technical systems and patrol), and Maintenance policies (repair and landscaping).

3.3 Consultants. Monument shall recommend Consultants to perform services for the Project, subject to the terms and conditions of this Agreement. Any consulting services sought or utilized by Monument will be included in the "Development Budget" and will not be subject to an additional development fee to Monument.

3.4 Warranties. Monument shall not make any independent warranties with respect to the Project. The General Contractor in the Construction Contract and all applicable sub contractors retained pursuant thereto shall provide all warranties with respect to the Project. All warranties shall commence upon Substantial Completion and shall run directly to NMMC without recourse to Monument.

3.5 Warranty Inspection. Monument shall conduct a warranty inspection of the Project prior to the expiration of the applicable warranty periods as identified in the Construction Documents. Monument shall assist in enforcement of warranties and coordinate all warranty work until all provisions of the applicable warranty periods are satisfied. Monument shall provide such services within the Development Sum.

3.6 Certifications. Prior to Final Completion, the Monument will use commercially reasonable efforts to obtain and submit to NMMC all certifications and other documents required to be submitted by the Architect and the General Contractor and Consultants.

#### 4. The Term.

4.1 Term. The term of this Agreement begins on the Effective Date and ends on the Termination Date, August 1, 2015, or otherwise as provided in this Agreement. ("Term")

4.2 Substantial Completion. If the Project is not Substantially Complete on or before the Guaranteed Date, Monument shall enforce all rights against General Contractor under the Construction Contract, including the right to recover for direct liquidated damages, subject to any extension of such date permitted under the terms of this Agreement and without recourse to Monument.

The Parties agree that the Guaranteed Date will be extended to the extent of any delays



caused by: (a) the failure of the parties to reasonably cooperate; (b) the breach by any party of any obligation under the Construction Documents, including but not limited to payment obligations thereunder, this Agreement or the Financing documents, or any action or omission of the parties that causes a breach of this Agreement; (c) the failure of the parties to timely review documents, provide responses or give consent; (d) the failure of the parties to issue an order to commence work or to start work on or before June 1, 2014; (e) the failure to close upon the transactions set forth in the Indenture; (f) the failure of the parties to timely prepare, provide access to, or limit access to the Project Site, or the failure to timely provide, or limit access to required utilities; (g) the occurrence or existence of Unknown Site Conditions, the handling of which will have a material adverse impact on the project schedule (as defined in the Construction Contract and/or the Development Budget); (h) the failure to provide timely inspections as the permitting authority for construction purposes as set forth in Section 6.3; (i) site visits authorized by Section 2.3 by NNMC and/or the Project's lender; (j) the failure to obtain or maintain in effect any land use or other governmental approval affecting, or that may affect, adversely the performance of this Agreement or the Construction Contract; (k) any change in any law or regulation applicable to the Project; (l) the occurrence of any event constituting Force Majeure; or (m) schedule impacts of an increase in scope of work required by the parties. The Parties further agree that the Guaranteed Date shall only be extended for the minimum time necessary or impacted by the above causes and all Parties shall use commercially reasonable efforts to minimize any delay period to the extent commercially practicable. Requests for changes to the guaranteed date for any of the above-referenced occurrences shall be subject to a change order.

## **5. Limitations and Restrictions.**

5.1 Changes. Except as set forth in Section 4.2 above, General Contractor, Consultants, and their respective contractors, sub-contractors, sub-consultants, agents, employees, and others supplying labor, equipment, or material by or through them to the Project may not without the prior written consent of the Parties (a) make any material change to the scope of the Project (specifically including without limitation any material change to the Plans and Specifications, the Construction Contract or the Architect's Contract), or (b) make any change to the Guaranteed Date for Substantial Completion or the date for Final Completion. The Parties understand and agree that the General Contractor may adjust near-term schedules from time to time in order for Monument to achieve Substantial Completion by the Guaranteed Date and/or Final Completion by the date for Final Completion.

5.2 Public Safety. Notwithstanding Section 5.1, Monument shall cause the General Contractor to act, if Monument in its reasonable, good faith judgment considers that such action is necessary to preserve the structural integrity of the Project, to protect the safety and welfare of people or property, or to comply with the requirements of a governmental authority with jurisdiction (an "Emergency") all in accordance with the provisions of the Construction Contract.

## **6. Development Team.**

6.1 Qualified Staff. Monument shall employ qualified development staff to perform all of Monument's responsibilities and obligations under this Agreement in a prompt and timely manner. NNMC acknowledges that Consultants may be added to or removed if it is determined to be in the best interest of the Parties and the Project, but only with notice to NNMC, who shall have the opportunity for input into such engagements.



6.2 **Applicable Laws.** In the performance of this Agreement, Monument and Consultants (including, but not limited to, the Architect and General Contractor) shall comply in all material respects with all applicable laws and regulations, including those affecting employees.

6.3 **Licenses.** Monument on behalf of Project shall cause the General Contractor and all Principal Consultants to obtain or cause the same to be obtained, have and keep all required licenses, permits, and insurance coverage for the Project. In order to position the Project for the most efficient and timely construction, delivery and occupancy, NNNMC and Monument shall work together cooperatively and in good faith to have the Project permitted for construction and certified for temporary and/or permanent occupancy as follows: by (a) building, (b) area, or (c) floor (subject to other required agency approvals, that phased occupancy will not violate any statutes, rules or codes, or present a danger to life or property).

6.4 **Single Point-of-Contact.** Designated Representatives of Each Party. The Parties agree that in order to facilitate an efficient working relationship throughout the Project planning, design and construction periods, Monument will be the single point-of-contact to NNNMC for the development of the Project, but will actively involve and make available Consultants to participate in regularly scheduled planning and progress meetings with NNNMC officials ("DT Meetings"), to be held through the design and construction phases of the Project. The Consultants will present ideas, concepts, and ultimately plans, specifications, budget and other proposals to NNNMC and their designated project team, in an effort to provide updates on progress and to solicit input, feedback, and when appropriate, decisions and/or approvals on material matters pertaining to the development and delivery of the Project.

## 7. Development Budget.

7.1 **Development Budget.** Within 30 days after the Effective Day Monument shall deliver or cause to be delivered a draft of a Development Budget to NNNMC. That development budget shall be in the form set forth on Exhibit 9 and shall contain a budget setting forth the costs of developing and constructing the Project. By way of example, and not by limitation, this budget should include all hard and soft costs of construction, any due diligence costs such as title, survey, engineering, geotechnical and environmental reports; permitting and other similar fees charged by the federal, state and local authorities; legal fees; financing fees; construction interest; the Development Fee; a contingency; and the cost of a payment and performance bond to be provided by the General Contractor.

7.2 **Revisions.** The Development Budget will be revised and/or the Project appropriately modified by agreement, as needed to reflect changes to the Project as a result of cost changes arising from any of the events.

## 8. The Project Development Account.

8.1 **Account.** Within thirty (30) days after the execution of this Agreement, Monument shall open and thereafter keep open one operating account (the "Project Development Account"). The Project Development Account shall be at a bank or other financial institution



acceptable to NNMIC.

8.2 Deposits. NNMIC shall deposit all Draws into the Project Development Account to be used for the payment of Project expenses. All of Monument's obligations under this Agreement are contingent upon NNMIC making the deposits required under this section.

8.3 Payments. Monument shall make all payments to Monument, General Contractor, Architect, Consultants, and Suppliers from the Project Development Account.

8.4 Final Completion. Upon Final Completion, the funds remaining in the Project Development Account, including any interest earned shall be distributed as required and the account terminated.

## 9. Draw Requests and Draws.

9.1 Draw Requests. Monument shall make all requests ("Draw Requests") for payments ("Draws") of Development Cost in accordance with the requirements of the Financing in writing to its lender. Monument shall also provide the NNMIC with a copy of any Architect's deliverables and/or certifications contemplated under the Architect's Contract applicable to the work performed for the Draw Request.

9.2 Information. Draw Requests shall include all information and documents required as a condition for Draws in the Indenture.

9.3 Discharge of Liens. Monument shall use commercially reasonable efforts, at Project's cost and expense, to cause the General Contractor to discharge any and all mechanics or similar lien filed of record against the Project for work or materials claimed to have been furnished to the Project ("Liens"). If the General Contractor fails to discharge the Liens by bond or otherwise, Monument will cause the Liens to be so discharged on behalf of the Project and solely from funds in the Project Development Account, within thirty (30) days following the date whereupon Monument determines that the General Contractor has not caused the Liens to be discharged of record, provided, however that Monument can make a recommendation that the Lien should be contested in good faith and with reasonable diligence, the validity of any such Lien or claimed Lien, as long as such Liens are promptly removed by bond or is otherwise protected to the reasonable satisfaction of the Project's lender.

## 10. Monument Records.

10.1 Financial Records. Monument shall make and keep records and accounts on a cash basis. They shall be sufficient for financial statements in accordance with generally accepted accounting principles, consistently applied, to be prepared from them.

10.2 Location. Books and records kept by Monument pertaining to the Project shall always be accessible and they shall be available for inspection by NNMIC, the Project's lender or their respective representatives during normal business hours, within three (3) days after reasonable request therefore.

## 11. Project Site Safety and Access; Utilities.



## 11.1 Monument Responsibilities.

11.1.1 Project Site Safety and Access. General Contractor will have full and exclusive responsibility for Project Site safety during the course of performance of this Agreement pursuant to the terms of the Construction Contract. Access to the Project Site by the NNMIC and the Project's lender shall be as set forth in Section 2. Monument, and all persons acting, by, through, under, or at the direction of, Monument, shall have unfettered access to the Project Site, on a twenty-four (24) hour per day, seven (7) day per week basis, beginning on the Effective Date and continuing throughout the term.

11.1.2 Mobilization Plan. The General Contractor's mobilization plan for the Project, including without limitation proposed fence lines, gates and traffic flow will be presented to NNMIC for its approval and shall be set forth in the Construction Contract.

11.1.3 Utilities. NNMIC will provide access to all utilities to the perimeter and within the Project Site subject to the terms of the Construction Contract and certain utilities outside the perimeter of the Project Site, including connections and extensions, as shown on the Construction Documents.

11.1.4 Staging. Prior to the commencement of construction Monument shall cause the General Contractor to provide Project a Construction Staging and General Contractor Parking Plan ("Staging and Parking Plan") pursuant to the terms of the Construction Contract. Monument shall cause the General Contractor to exercise commercially reasonable efforts to adhere to the Staging and Parking Plan and enforce adherence of the same to General Contractor's employees, sub-contractors and the like to the reasonable satisfaction of NNMIC.

## 12. Insurance

12.1 Project Insurance. Throughout the Term, Monument shall cause Architect, Contractor and Consultants insurance to be acquired and maintained in force "Project Insurance" as provided in Exhibit 9, and shall list the Parties as named insured.

12.2 Waiver NNMIC and Monument waive all rights against each other and the General Contractor, sub-contractors, consultants, agents, and employees of each other, for damages caused by fire or any other peril to the extent all damage is compensated covered by any property insurance obtained under this Section or any other property insurance applicable to the Project work, except rights to proceeds of that insurance. The parties retain the right to recover for damages not otherwise covered by insurance related to property damages.

12.3 Consultant's Insurance. Before allowing any Consultant to enter the Project Site to begin any Project work, and for the duration of the Term, Monument shall obtain and deliver to the Project and the Project's lender copies of the Principal Consultants' Insurance as required in Exhibit 13.

## 13. Environmental Matters.

13.1 Restrictions. Monument shall cause the General Contractor pursuant to the terms of the Construction Contract to comply with Environmental Laws with respect to the Project and



shall not:

13.1.1 Direct, suffer, or permit any of its Project employees to handle, transport, use, manufacture or store any Hazardous Materials in or about the Project Site; or

13.1.2 Knowingly or negligently suffer or permit:

13.1.2.1 Any Hazardous Materials to be used by any employee or third party in any manner not fully in compliance with all Environmental Laws; or

13.1.2.2 The Project Site or adjoining areas to become contaminated with any Hazardous Materials.

13.2 "Hazardous Materials" are pollutants, contaminants, flammables, explosives, radioactive materials, hazardous wastes, substances, chemicals, or materials, toxic wastes, substances, chemicals or materials, or other similar substances, petroleum products, or derivatives, or any substance subject to regulation by or under Environmental Laws.

13.3 "Environmental Laws" are all Federal, state, and local laws and ordinances and common law principles relating to the protection of the environment, human health or natural resources or the generation, transportation, treatment, storage, disposal, recycling, keeping, use, or disposition of Hazardous Materials, substances, or wastes, presently in effect or adopted after the Effective Date. This includes all amendments to Environmental Laws, and all rules and regulations under any Environmental Laws.

13.4 Disposal. Notwithstanding the limitations set forth in Section 14.1, General Contractor shall handle, store, use, or dispose of Hazardous Materials in accordance with Environmental Laws and the terms of the Construction Contract.

#### 14. Development Cost; Monument Fee.

14.1 Development Cost. "Development Cost" means sum of the actual costs to perform all services under this Agreement. NMMC agrees to deposit all costs associated with Monument, Architect, Contractor and Consultants included in Development Costs in Project Development Account as those amounts become due.

14.2 Monument Consulting and Management Fee. In exchange for Monument's services and its completion of the project, Monument will be compensated in the amount of \$856,570.68 ("base performance compensation"), for all services rendered under this contract. However, if the project is brought to final completion by August 1, 2015, and is delivered at or below the project's budgeted price (identified in Exhibit 9 as \$12,236,724), Monument will receive an "incentive fee" of an additional \$122,367.24.

Based upon these figures and timelines, Monument will be compensated as follows:

14.2.1 Upon the closing of financing, Monument will receive an initial payment in the amount of \$ 247,832.00 ; and

14.2.2 Thereafter, Monument will be paid monthly a pro-rata portion of the base



performance compensation, as outlined in exhibit 9. That monthly payment amount is subject to adjustment for any extensions or delays that impact Final Completion of the project. The monthly payments will be made to Monument concurrently with Draw payments until Final Completion, at which time the final payment of the base performance compensation and incentive fee, if applicable, will be paid to Monument.

#### **15. Payment Bonds and Performance Bonds.**

Monument shall cause the General Contractor to provide the Performance Bond and Payment Bond. The Performance Bond and Payment Bond surety shall be obligated to perform all obligations of the General Contractor.

#### **16. Force Majeure; Termination; Default.**

16.1 If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of any of the following (each an event of "Force Majeure"): acts of God; wars, insurrection, sabotage and terrorist actions; riots, strikes, lockouts, labor troubles; plan approval or permitting delays; inability to procure materials or utilities; restrictive governmental laws or regulations or orders or restraints of any kind of any federal, state or local governmental agency fire or other casualty; earthquakes; tornadoes, floods and other Abnormal Weather Conditions (as defined herein), Unknown Site Conditions any order issued by any court or tribunal; unusual delay in transportation; delay by the other party hereto or other cause without fault and beyond the control of the party obligated to perform, then upon written notice to the other party, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equal to the period of such delay; provided, however, the party so delayed or prevented from performing shall exercise good faith efforts to remedy any such cause of delay or cause preventing performance. The parties shall not incur any cost or expense as a result of Force Majeure, and time frames required for performance under this Agreement shall be extended, on a day-to-day basis, during the pendency of any events of Force Majeure. For purposes of this Agreement, "Abnormal Weather Conditions" shall consist of weather conditions that deviate from the average of the proceeding five (5) year climatic range during the same time interval based on National Oceanic and Atmospheric Administration National Weather Service statistics for the locality of the Premises and based on weather logs kept at the Premises reflecting the effect of the weather on the progress in completing the Project.

16.2 This Agreement will remain in effect until the Project is Finally Complete, or as otherwise provided in this Agreement.

16.3 NNMC may terminate this Agreement (subject to Monument's right to cure) for any default ("Monument Default") by Monument (a Monument Default, after expiration of any applicable grace or cure period hereunder, shall constitute an "Event of Default"). Monument Default includes any one or more of the following:

16.3.1 Monument files a voluntary proceeding under any bankruptcy or insolvency laws, or is the subject of an order of relief under any present or future law relating to



Default includes any one or more of the following:

16.6.1 NNMIC materially fails or refuses to perform any obligation under this Agreement in a manner and within the time required by this Agreement;

16.6.2 The NNMIC Representative commits or permits a material breach of any of NNMIC's duties, liabilities or obligations under this Agreement without full and timely cure or remedy; or,

16.6.3 NNMIC unreasonably refuses to approve Project work or otherwise cooperate with Monument hereunder.

16.7 Notice of Default. Monument shall provide NNMIC, with a written Notice of Default that describes the nature of the NNMIC Default, after which:

16.7.1 NNMIC shall have sixty (60) days to cure the NNMIC Default;

16.7.2 However, NNMIC can cure an NNMIC Default not reasonably capable of being cured within sixty (60) days, if NNMIC begins to cure within sixty (60) days and then diligently pursues the cure thereof to completion to the reasonable satisfaction of Monument.

In the event that NNMIC undertakes to cure an NNMIC Default, the Guaranteed Date for Substantial Completion shall be extended by number of days during which such cure is being pursued, beginning with the date of Notice of Default.

## 17. Completion.

17.1 Substantial Completion. For purposes of this Agreement, the Project will be deemed substantially complete ("Substantially Complete" or "Substantial Completion") when the Project improvements are:

17.1.1 Substantially completed as required by the Plans and Specifications, inclusive of the Construction Documents and the installation of fixtures, furniture and equipment, including all life safety systems, all required temporary certificates of occupancy are issued, the Project is capable of being occupied for its intended purposes, and a punch list of unfinished items has been prepared by Monument and provided to NNMIC; and

17.1.2 All governmental authorities having jurisdiction over occupancy prior to the Final Completion, including the State Fire Marshal, if applicable, have given their approval for occupancy of the Project on a temporary basis pending the occurrence of Final Completion.

17.2 Final Completion. For purposes of this Agreement, the Project will be deemed finally complete ("Finally Complete" or "Final Completion") when such respective components of the Project improvements are:

17.2.1 Fully completed as required by the Construction Documents (including all punch list items) and all required final certificates of occupancy are issued;



17.2.2 Fully paid for and free from all liens of Monument, General Contractor, Consultants, Suppliers, and Project laborers;

17.2.3 All governmental authorities with jurisdiction, including the State Fire Marshal, have given their final approval of the Project;

17.2.4 All final releases, warranties, manuals, General Contractor marked as-built drawings, CAD drawings, equipment cuts, operating guides and any other documents necessary for full operation of the Project are delivered to NNMIC.

17.2.5 NNMIC has indicated in writing that it considers the project as "final completion".

17.3 Substantial Completion. The Construction Contract will provide that the General Contractor will achieve Substantial Completion for the Project on or before the Guaranteed Date, which may be extended at no expense to or obligation of Monument due to any of the events set forth in the last paragraph of Section 4.2.

17.4 Final Completion. The Construction Contract will provide that the General Contractor will achieve Final Completion within a reasonable time (but in no event more than one hundred fifty (150) days) after the occurrence of Substantial Completion for the Project; provided however, if one or more of the above conditions to Final Completion is unfulfilled thirty (30) days after written notice thereof from General Contractor to NNMIC because of any NNMIC Default, then Monument may disregard that condition and declare the Project completed under this Agreement.

## 18. Change Orders.

18.1 Monument, with consultation and agreement from NNMIC, shall assist the Project in requesting the issuance of a Change Order to modify the Project together with appropriate modifications to the cost, time, scope of work, or compensation provisions of this Agreement, all in accordance with the terms of the Construction Contract.

## 19. Monument's Duties in Case of Loss.

19.1 Notification. Monument shall promptly notify NNMIC and the Project's lender of any fire or other damage to the Project or any portion of the Project Site. Monument will arrange for an insurance adjuster to view the Project Site or the Project before repairs are started. Monument shall settle any losses, complete loss reports, adjust losses, or endorse loss drafts.

19.2 Damage. Monument shall promptly notify NNMIC of any personal injury or property damage occurring to the Project or on the Project Site.

## 20. Ownership of Information and Materials.



**20.1 Return of Information.** On termination of this Agreement, Monument shall deliver to NNMC all originals of written data and information generated by or for Project in connection with the Project; provided, however, (i) NNMC shall have provided Monument during the Project with the required compensation for such generated data and information, and (ii) Monument shall, for the purposes of Monument's post-termination obligations and dispute resolution, be permitted to retain copies of the written data and information generated by or for Monument in connection with the Project.

**21. Notices.**

Each notice, request, and communication required under this Agreement (other than those under Section 2.3 shall be in writing. It will be deemed to have been received: (i) on personal delivery; (ii) on the second business day after its deposit for overnight delivery with a recognized overnight delivery service; (iii) if by facsimile, on receipt of electronic confirmation of its receipt (but only if the facsimile is followed by delivery by United States mail); or (iv) if mailed, on actual receipt (but only if sent by registered or certified mail, with return receipt requested, addressed to the other Party's address below):

If to NNMC:

Ryan Cordova  
921 Paseo de Oñate  
Espanola, NM 87532

With a copy to:

Domingo Sanchez III

If to Monument

John Petelik  
1 North Pennsylvania Street, Suite 1000  
Indianapolis, IN 46204

With a copy to:

Timothy Pitcher

**22. Non-Discrimination Policy.** Monument will not deny the benefits of this Agreement to any person, or discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, sexual orientation, or other applicable protected classification. Monument, unless exempt, will abide by the terms of all applicable Federal, state, and local non-discrimination provisions.

**23. Dispute Resolution.** In the event that the parties have a dispute that is not resolved despite their good faith efforts to resolve the matter, it will be decided by final, binding arbitration in accordance with the Construction Arbitration Rules of the American Arbitration Association. The parties may agree upon one (1) arbitrator. In the event the parties cannot so agree within ten (10) days following the date the parties determine that the dispute cannot be resolved, each party shall select an arbitrator and the arbitrators shall select a third arbitrator. The decision of the majority of such arbitrators shall be binding and conclusive. Should any party refuse or neglect to join in the appointment of an arbitrator, an arbitrator shall be appointed in accordance with the Construction Arbitration Rules. All arbitration hearings conducted hereunder shall take place in New Mexico. The hearing of the



matter to be arbitrated shall be at the time and place as is selected by the arbitrator(s), but in all cases as promptly as practicable, it being recognized that time is of the essence in order to resolve the dispute. Notice shall be given and the hearing conducted in accordance with the provisions of the Construction Arbitration Rules. The arbitrators shall hear and determine the matter and shall execute and acknowledge its award in writing and deliver a copy thereof to the parties by electronic mail and by registered or certified mail or nationally recognized overnight carrier. Costs and expenses of arbitration, including, but not limited to the fees and costs of the arbitrators, shall be borne equally by the parties. This agreement to arbitrate is specifically enforceable and the arbitration award is final and judgment may be entered upon it in any court having jurisdiction over the subject matter of the disputed matter. Each party has the right, without awaiting the outcome of the arbitration, to seek from an appropriate court provisional remedies including, but not limited to, temporary restraining orders or preliminary injunctions, before, during or after arbitration and seeking such a remedy shall not be deemed to be a waiver of the party's right to compel arbitration.

**24. Agent for Service of Process; Venue.**

**24.1 Agent for Process.** Monument will appoint an agent for service of process in the State of New Mexico.

**24.2 Venue.** Subject to the dispute resolution provisions of this Agreement, venue for any litigation between NMMC and Monument which relates to or arises out of this Agreement or its breach will be exclusively in a trial court in the First Judicial District of New Mexico, with Parties expressly waiving any rights to begin, defend, or remove any such litigation in any other forum or venue.

**25. Attorneys' Fees.** In any lawsuit, arbitration, or injunctive proceeding between the Parties concerning any part of this Agreement or the rights and duties of either Party, the arbitrator or court will determine fees and costs.

**26. Independent Contractor.** Monument will be an independent contractor of NMMC not its employee or agent.

**27. Severability.** Each part of this Agreement is intended to be severable. If an arbitration panel or court of competent jurisdiction finds any part of this Agreement to be unenforceable or invalid for any reason, that finding will not invalidate or adversely affect the rest of this Agreement. But if that finding would result in unjust enrichment or extreme hardship to either of the Parties, or make performance of either Party's obligations under this Agreement unreasonable or impossible, the remaining portions of this Agreement may be invalidated or modified, in whole or in part, as determined by the arbitration panel or the court of law.

**28. Waiver; Consents.** No consent or waiver to a Default may be deemed or construed to be a consent or waiver to any other Default.

**28. Governing Law.** This Agreement is entered into in the State of New Mexico, and is governed by its laws, without regard to its principles of conflicts of laws.

**30. Assignment.** Except to an affiliate, Monument may not assign its rights or obligations without the prior written consent of NMMC, which consent shall not be unreasonably withheld.



All of the rights, benefits, duties, liabilities, and obligations of the Parties will inure to the benefit of and be binding on their respective successors and assigns. Monument acknowledges that this Agreement will be collateral assigned to Project's lender. Monument shall consent to such assignment and recognizes the Project's lender as the party entitled to exercise or enforce such rights (including consent rights).

**31. Modification of Agreement.** To be effective, any modification of this Agreement shall be in writing and signed by NNM/C and Monument.

**32. Headings.** The headings are inserted for convenience only. They may not affect the construction or meaning of anything in this Agreement.

**33. Interpretation.** "Include" and "including" each refers to all other items or matters that could reasonably fall within the broadest possible scope of the general statement, term, or matter appearing before it. All references to Articles, Sections, Paragraphs, Recitals, Preamble, and Exhibits mean designated parts of this Agreement.

**34. Further Assistance.** Each Party will execute other documents and take other actions as may be reasonably required by the other Party to carry out the purposes of this Agreement.

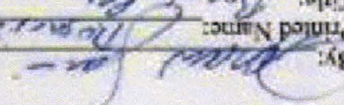
**35. Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

Effective on the first date set forth above.

Monument, LLC

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Northern New Mexico College

By:   
Printed Name: David J. Garcia  
Title: President



Monument LLC  
One North Pennsylvania Street  
Suite 1000  
Indianapolis, IN 46204

0.00

326,898.03+  
89,487.59+  
86,058.37+  
87,626.84+  
93,281.25+  
32,341.25+  
32,341.25+  
35,653.94+  
34,241.13+  
24,484.05+  
010  
844,593.66+  
844,593.66+  
125,000.00+  
54,804.40+  
000  
649,398.36+  
pay w/o  
Finance  
Charge

Bill To: Northern New Mexico College  
321 N Paseo de Oeste  
Españole, NM 87532

Date:	09/08/14
Amount Due:	\$649,398.36
Enclosed:	

Date	Description	Amount	Balance
10/31/13	Balance forward	0.00	0.00
12/01/13	INV #NNMC-119013	326,898.03	326,898.03
12/31/13	INV #NNMC-123113	89,487.59	416,385.62
01/31/14	INV #NNMC-013114	86,058.37	504,423.99
02/28/14	INV #NNMC-022814	4,903.47	509,327.46
02/28/14	Finance Charge	87,626.84	596,954.30
03/31/14	INV #NNMC-033114	6,245.78	603,200.08
03/31/14	Finance Charge	93,281.25	696,481.33
03/31/14	Finance Charge	7,566.36	704,047.69
04/30/14	PMT #71200	-125,000.00	579,047.69
04/30/14	INV #NNMC-043014	32,341.23	611,388.92
04/30/14	Finance Charge	7,005.76	618,394.68
05/31/14	PMT	-125,000.00	493,394.68
05/31/14	INV #NNMC-053114	32,341.23	525,735.91
05/31/14	Finance Charge	6,529.98	532,265.89
06/30/14	INV #NNMC-063014	35,853.94	568,119.83
06/30/14	Finance Charge	7,015.10	575,134.93
07/31/14	INV #NNMC-073114	34,241.13	609,376.06
07/31/14	Finance Charge	7,600.22	616,976.28
08/31/14	INV #NNMC-083114	24,484.05	641,460.33
08/31/14	Finance Charge	8,038.03	649,398.36
Current			\$649,398.36
1-30 Days	Post Due	\$0.00	
31-60 Days	Post Due	\$34,241.13	
61-90 Days	Post Due	\$35,853.94	
91-120 Days	Post Due	\$500,014.54	
Over 120 Days	Post Due	\$649,398.36	



# Statement

Monument LLC  
One North Pennsylvania Street  
Suite 1000  
Indianapolis, IN 46204

Bill To: Northern New Mexico College  
921 N Paseo de Oñate  
Española, NM 87532

Date: 09/08/14 Amount Due: \$649,398.36 Enclosed

Date	Description	Amount	Balance
10/31/13	Balance forward	326,898.03	0.00
12/01/13	INV #NNMC-113013	89,487.59	416,385.62
12/01/13	INV #NNMC-123113	88,038.97	504,423.99
01/01/14	INV #NNMC-013114	4,903.47	509,327.46
02/28/14	INV #NNMC-022814	87,626.84	596,954.30
02/28/14	Finance Charge	6,245.78	603,200.08
03/01/14	INV #NNMC-033114	93,281.25	696,481.33
03/31/14	Finance Charge	-7,566.86	704,047.89
04/21/14	PMT #71200	-125,000.00	579,047.89
04/30/14	INV #NNMC-043014	32,341.20	611,389.02
04/30/14	Finance Charge	7,005.76	618,394.68
05/19/14	PMT	-125,000.00	493,394.68
05/31/14	INV #NNMC-053114	32,341.20	525,735.91
05/31/14	Finance Charge	6,529.98	532,265.89
06/30/14	INV #NNMC-063014	35,853.94	568,119.83
06/30/14	Finance Charge	7,015.10	575,134.93
07/31/14	INV #NNMC-073114	34,241.13	609,376.06
07/31/14	Finance Charge	7,500.22	616,876.28
08/31/14	INV #NNMC-083114	24,484.05	641,360.33
08/31/14	Finance Charge	8,038.03	649,398.36

4370.0587K \$21,211.12 \$21,211.12 \$21,211.12 \$21,211.12 \$21,211.12 \$21,211.12



### **Rental Comparison Analysis Summary**

Monument has a very specific process to determine fair market rent. We start by defining the competing higher education institutions. In the case of NNMC, Monument conducted interviews with Ryan Cordova and Frank Orona. The interviews served to understand where recruitment takes place and which colleges are selected by potential students over NNMC. After compiling the full list, Monument examined room rental rates, and matched them up to NNMC's most comparable future offerings. The schools that were selected for comparison are, New Mexico Highlands University, Western New Mexico University, and Eastern New Mexico University.

When comparing NNMC offerings with New Mexico Highlands University, NNMC prices are comparable to NMHU. Being that much of NMHU's inventory is traditional style and older, their average price is reflective. Viles and Crimmin Residence Halls are between \$4,936 and \$3,456 Per academic year. These are traditionally Freshman dorms, and line right up with NNMC's Freshmen Option which is \$4,400 Per calendar year. NNMC clearly offers a better price. As mentioned, in many cases, the older inventory dorms can be rented for much cheaper. This is evident in the dorm pricing that ranges from \$3,780 to \$4,220 per academic year.

When looking at Western New Mexico University there are many similar facilities. Mustang Village is WNMU's newest and most direct comparison. The largest suite style floor plan rents for \$5,900 per academic year. This comes out to \$655.55 per month for a comparable layout to NNMC's upperclassmen facility, which rents for \$550 per month. When looking at the additional apartment style offerings at WNMU, it is evident that NNMC housing is substantially more affordable. If a WNMU student decides to get the "premium" housing option, which includes nicer finishes, they will pay between \$6,000 and \$7,000 per 9-month academic year.

Eastern New Mexico University comes in a bit under everyone else. A Student can rent an apartment at ENMU for between \$4,122 and \$4,689 per 9-month academic year. This works out to cost between \$458 and \$521 per month. This is the best comparison that ENMU has to the NNMC upperclassman facility, which costs \$550 per month, or \$366.67 per month for a double room occupancy. Freshman traditional dorm style options range from \$3,924 to \$3,018. It is hard to compare the price of a dorm-style communal bathroom facility to a suite style semi private bathroom offering.

Off-Campus options are limited to Las Lomas Apartments. The cost of living there comes in at a little under \$300.00 per month per bed, not including utilities. After conducting student focus groups at NNMC, it became evident that the students currently living there do not feel that it is a safe environment due to fatal shootings, home invasions, and burglaries. It is questionable as to whether Las Lomas Apartments should even be considered a student housing option at all.



Northern New Mexico College

Date	Development Fee	Monument Travel	Project Land Survey	Geotechnical Engineering	Institutional Master Plan	Schematic Design	Architectural Fees	Architect	Travel
12/1/2013	97,500.00	17,986.28	8,336.25	10,566.25	57,520.00	110,250.00	-	-	-
12/31/2014	80,166.40	2,548.88	-	-	-	-	-	-	-
1/31/134	80,166.40	1,209.33	-	-	-	-	-	-	-
2/28/2014	80,166.40	828.95	-	-	-	-	-	-	-
3/31/2014	80,166.40	6,055.44	-	-	-	-	-	-	-
4/30/2014	29,893.68	-	-	-	-	-	-	-	-
5/31/2014	29,893.68	-	-	-	-	-	-	-	-
6/30/2014	29,893.68	3,246.88	-	-	-	-	-	-	-
7/31/2014	29,893.68	1,756.12	-	-	-	-	-	-	-
8/31/2014	-	1,722.72	-	-	-	-	13,120.00	7,273.17	-
Total	537,740.32	35,354.60	8,336.25	10,566.25	57,520.00	110,250.00	13,120.00	7,273.17	-



## Northern New Mexico College

Reproduction and			Gross Receipts			Finance	Payments Paid to		
Date	Phone	Subtotal	Tax	Total	Invoice	Charges	Date	Statement	Total
12/1/2013	-	302,158.78	24,739.25	326,898.03		-	(250,000.00)		76,898.03
12/31/2014	-	82,715.28	6,772.31	89,487.59		-	-		89,487.59
1/31/134	-	81,375.73	6,662.64	88,038.37		4,903.47	-		92,941.84
2/28/2014	-	80,995.35	6,631.49	87,626.84		6,245.78	-		93,872.62
3/31/2014	-	86,221.84	7,059.41	93,281.25		7,566.36	-		100,847.61
4/30/2014	-	29,893.68	2,447.55	32,341.23		7,005.76	-		39,346.99
5/31/2014	-	29,893.68	2,447.55	32,341.23		6,529.98	-		38,871.21
6/30/2014	-	33,140.56	2,713.38	35,853.94		7,015.10	-		42,869.04
7/31/2014	-	31,649.80	2,591.33	34,241.13		7,500.22	-		41,741.35
8/31/2014	515.24	22,631.13	1,852.92	24,484.05		8,038.03	-		32,522.08
Total	515.24	780,675.83	63,917.83	844,593.66		54,804.70	(250,000.00)		649,398.36
							Additional Pmts		(76,898.03)
							Outstanding Balance		572,500.33
							Finance Charges		(54,804.70)
							Gross Receipts Tax		(63,917.83)
							Cost of Services		453,777.80